

**§ 435. Levels of compensation of certain contractor personnel not allowable as costs under certain contracts**

**(a) Determination required**

For purposes of section 2324(e)(1)(P) of title 10 and section 256(e)(1)(P) of this title, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate.

**(b) Benchmark compensation amount**

The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) of this section is made.

**(c) Definitions**

In this section:

(1) The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the fiscal year.

(2) The term “senior executives”, with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

(3) The term “benchmark corporation”, with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

(4) The term “publicly-owned United States corporation” means a corporation organized under the laws of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States the voting stock of which is publicly traded.

(5) The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(Pub. L. 93-400, §39, as added Pub. L. 105-85, div. A, title VIII, §808(c)(1), Nov. 18, 1997, 111 Stat. 1837; amended Pub. L. 105-261, div. A, title VIII, §804(c)(1), Oct. 17, 1998, 112 Stat. 2083.)

**CODIFICATION**

Another section 39 of Pub. L. 93-400 was renumbered section 40 and is classified to section 436 of this title.

**AMENDMENTS**

1998—Subsec. (c)(2). Pub. L. 105-261 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘senior executive’, with respect to a corporation, means—

“(A) the chief executive officer of the corporation or any individual acting in a similar capacity for the corporation;

“(B) the four most highly compensated employees in management positions of the corporation other than the chief executive officer; and

“(C) in the case of a corporation that has components which report directly to the corporate headquarters, the five most highly compensated individuals in management positions at each such component.”

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-261 applicable with respect to costs of compensation of senior executives incurred after Jan. 1, 1999, under covered contracts entered into before, on, or after Oct. 17, 1998, see section 804(d) of Pub. L. 105-261, set out as a note under section 2324 of Title 10, Armed Forces.

**EFFECTIVE DATE**

Section 808(e) of Pub. L. 105-85 provided that: “The amendments made by this section [enacting this section and amending section 256 of this title and section 2324 of Title 10, Armed Forces] shall—

“(1) take effect on the date that is 90 days after the date of the enactment of this Act [Nov. 18, 1997]; and

“(2) apply with respect to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of the enactment of this Act.”

**REGULATIONS**

Section 808(d) of Pub. L. 105-85 provided that: “Regulations implementing the amendments made by this section [see Effective Date note set out above] shall be published in the Federal Register not later than the effective date of the amendments under subsection (e) [see Effective Date note set out above].”

**EXCLUSIVE APPLICABILITY OF PROVISIONS LIMITING ALLOWABILITY OF COMPENSATION FOR CERTAIN CONTRACTOR PERSONNEL**

Section 808(f) of Pub. L. 105-85 provided that: “Notwithstanding any other provision of law, no other limitation in law on the allowability of costs of compensation of senior executives under covered contracts shall apply to such costs of compensation incurred after January 1, 1998.”

**DEFINITIONS FOR PURPOSES OF SECTION 808 OF PUB. L. 105-85**

Section 808(g) of Pub. L. 105-85, as amended by Pub. L. 105-261, div. A, title VIII, §804(c)(2), Oct. 17, 1998, 112 Stat. 2083, provided that: “In this section [enacting this section, amending section 256 of this title and section 2324 of Title 10, Armed Forces, and enacting provisions set out as notes under this section]:

“(1) The term ‘covered contract’ has the meaning given such term in section 2324(l) of title 10, United States Code, and section 306(l) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256(l)).

“(2) The terms ‘compensation’ and ‘senior executives’ have the meanings given such terms in section 2324(l) of title 10, United States Code, and section 306(m) of the Federal Property and Administrative Services Act of 1949.”

**§ 436. Protection of constitutional rights of contractors**

**(a) Prohibition**

A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive any right under the Constitution for any purpose related to Chemical Weapons Convention Implementation Act of 1997 [22 U.S.C. 6701 et seq.] or the Chemical Weapons Convention (as defined in section 3 of such Act [22 U.S.C. 6701]).